

	OAH 7-1005-19133-2
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of Amy C. Smolak (License Applicant)	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above matter came on for a Prehearing Conference before Administrative Law Judge (ALJ) Richard C. Luis on September 10, 2007 at the Office of Administrative Hearings in Minneapolis. The OAH record closed at the conclusion of the Prehearing Conference on September 10. Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Labor and Industry (Department). The Applicant, Amy C. Smolak (Applicant), 500 Greenhaven Road, #307, Anoka, MN 55303, did not appear in person or by any other representation.

STATEMENT OF THE ISSUE

Whether Ms. Smolak's application for licensure as a real estate salesperson should be denied because she has engaged in acts demonstrating that she is untrustworthy, incompetent or otherwise unqualified to act under the license, and because she filed an application for a license that provided misleading or incomplete information, in violation of Minn. Stat. §§ 45.027, subds. 7(a)(3) and 7(a)(4) and 82.35, subd. 1(a)?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 10, 2007, the Department sent by First Class Mail a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, Statement of Charges and Notice of Appearance (Notice) to Amy C. Smolak at her last known address – 500 Greenhaven Road, #307, Anoka, MN 55303. The Notice stated that a Prehearing Conference was scheduled in this matter on September 10, 2007.

2. The Notice sent to the Applicant provided, at page five:

“1. Respondent’s failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department’s allegations contained in the Statement of Charges may be accepted as true, and that Respondent’s license application may be denied.”

3. The Applicant/Respondent did not appear at the hearing, nor did anyone appear on her behalf. She did not contact the Administrative Law Judge, the Department or the Office of Attorney General prior to the hearing to request a continuance or any other relief.

4. Because the Applicant failed to appear for the hearing, she is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges are taken as true, deemed proven and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction herein under Minn. Stat. §§ 14.50 and 82.35.

2. The Applicant received proper and timely notice of the charges against her and of the time and place of the hearing. This matter is properly before the Administrative Law Judge. The Department has complied with all procedural requirements.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations as set out in the Notice or other pleadings may be taken as true or deemed proved without further evidence.

4. The Respondent is in default as a result of her failure to appear at the hearing, so the allegations contained in the Statement of Charges are taken as true and deemed proved.

5. The Respondent has violated Minn. Stat. § 45.027, subd. 7(a)(4) by engaging in acts that demonstrate she is untrustworthy, incompetent or otherwise unqualified to act under the license for which she has applied. She has also violated Minn. Stat. §§ 45.027, subd. 7(a)(3) and 82.35, subd. 1(a) by filing an application for a license that provided misleading or incomplete information. As a

result of these violations, it is appropriate to deny the application by Amy C. Smolak for licensure as a real estate salesperson.

6. A denial of Ms. Smolak's application for licensure as a real estate salesperson is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the application of Amy C. Smolak for licensure as a real estate salesperson be DENIED.

Dated: October 9th, 2007

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, ATTN: Sue Jensen, Minnesota Dept. of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.